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6

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

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|                              |   |                          |
|------------------------------|---|--------------------------|
| 10 UNITED STATES OF AMERICA, | ) | 2:09-CR-078-JCM-(RJJ)    |
|                              | ) | 2:10-CR-520-JCM-(RJJ)    |
| 11 Plaintiff,                | ) |                          |
|                              | ) | GOVERNMENT'S RESPONSE TO |
| 12 vs.                       | ) | DEFENDANT'S MOTION FOR   |
|                              | ) | INDEPENDENT AND UNBIASED |
| 13 SHAWN RICE,               | ) | COURT - CR # 26          |
|                              | ) |                          |
| 14 <u>Defendant.</u>         | ) |                          |

15  
16 COMES NOW the United States of America, by and through DANIEL G.  
17 BOGDEN, United States Attorney, and J. Gregory Damm and Nicholas D. Dickinson,  
18 Assistant United States Attorneys and hereby submits GOVERNMENT'S RESPONSE  
19 TO DEFENDANT'S MOTION FOR INDEPENDENT AND UNBIASED COURT -  
20 CR # 26.

21 On June 14, 2012, defendant Rice filed a verified document entitled MOTION  
22 FOR INDEPENDENT AND UNBIASED COURT. Defendant Rice requests "an  
23 independent and unbiased judge to preside over these proceedings." Defendant Rice  
24 claims that "the court has a conflict of interest pursuant to 28 USC sections 454 and  
25 455, because the judge in this case, based on information and belief, is believed to be  
26 invested in assets that bias the court." Defendant Rice also requests the "original oath

1 of office” and a “financial statement” to be produced by the court. Defendant Rice  
2 does not identify the judge alleged to have a conflict of interest by name. Defendant  
3 Rice also does not identify any facts to support his claims of conflict of interest.

4 On March 6, 2009, the Court issued an Order Regarding Pretrial Procedure (#11)  
5 in case 2:09-cr-00078-JCM-RJJ and on January 19, 2012, issued an Order Regarding  
6 Pretrial Procedure (#9) in case 2:10-cr-00520-JCM-RJJ. The Orders (#11 & #9) stated  
7 that each party had "thirty (30) calendar days from the date of this order within which  
8 to file and serve any and all pretrial motions and notices of defense." The deadline for  
9 pretrial motions was April 5, 2009, in case 2:09-cr-00078-JCM -RJJ. Document 256  
10 filed 07/03/12 2:09-cr-00078-JCM-RJJ and February 19, 2012, in case  
11 2:10-cr-00520-JCM-RJJ. These deadlines were never extended. Thus, Rice's Motion  
12 For Independent and Unbiased Court (#26) is late. The pretrial motions deadline in the  
13 consolidated case, 2:10-cr-00520-JCM-RJJ, also expired in February 2012. See Order  
14 Regarding Pretrial Procedure (#9), 2:10-cr-00520-JCM-RJJ.

15 According to the CM/ECF notice of the filing of the defendant's instant motion,  
16 the government's response to this motion was due July 1, 2012, a Sunday. Due to an  
17 error on counsel's part, this motion response deadline was inadvertently overlooked.  
18 As a consequence, the government also addresses the merits of defendant's claim.

19 "The initial decision whether or not to sit in a case rests with the individual  
20 judge." *In re Bernard*, 31 F. 3d 842, 843 (9th Cir. 1994). The circuit court has said  
21 that "Section 455 requires not only that a judge be subjectively confident of his ability  
22 to be even handed, but also that an informed, rational, objective observer would not  
23 doubt his impartiality. *United States v. Winston*, 613 F. 2d 221, 222 (9th Cir. 1980)."  
24 31 F. 3d at 844. The Ninth Circuit Court of Appeals has further clarified that "[t]he test  
25 for disqualification under section 455(a) is an objective one: whether a reasonable  
26 person with knowledge of all the facts would conclude that the judge's impartiality

1 might reasonably be questioned." *U.S. v. Nelson*, 718 F.2d 315, 321 (9th Cir. 1983),  
2 quoting *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1981), cert. denied. 449  
3 U.S. 1012 (1980).

4  
5 CONCLUSION

6 WHEREFORE, the United States respectfully requests that the defendant's  
7 Motion For Independent and Unbiased Court be denied. Defendant Rice has not  
8 identified any particular judge to which this motion applies. Also, Defendant Rice has  
9 not submitted any facts to support an allegation of conflict of interest.

10 DATED this 6th day of July, 2012.

11 Respectfully submitted,

12 DANIEL G. BOGDEN  
13 United States Attorney

14 /s/ J. Gregory Damm

15 J. GREGORY DAMM  
16 Assistant United States Attorney

17  
18 /s/ Nicholas D. Dickinson

19 NICHOLAS D. DICKINSON  
20 Assistant United States Attorney  
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Certificate of Service

I, Pamela Mrenak, hereby certify that I am an employee of the United States Department of Justice, and that on this day I served a copy of the following: GOVERNMENT'S RESPONSE TO DEFENDANT'S Motion For Independent and Unbiased Court - CR # 26, upon counsel for all defendants appearing in this matter via the CM/ECF system, by electronically filing said GOVERNMENT'S RESPONSE TO DEFENDANT'S Motion For Independent and Unbiased Court - CR # 25 and mailing a copy postage prepaid to Shawn Talbot Rice, P.O. Box 1092, Seligman, Arizona 86337 and to Shawn Talbot Rice, Inmate # 43739-048, Nevada Southern Detention Center, 2190 E. Mesquite Ave., Pahrump, NV 89060-3427.

Dated: July 6, 2012

/s/ Pamela J. Mrenak  
Legal Assistant to J. Gregory Damm  
Assistant United States Attorney  
District of Nevada